

International Union of Teamsters, Local 179 and Roberts Pipeline, Inc. and Laborers International Union of North America and International Union of Operating Engineers. Case 25–CD–092655

August 5, 2014

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). Roberts Pipeline, Inc. (the Employer) filed a charge on November 6, 2012, alleging that the International Union of Teamsters, Local 179 (Teamsters Local 179) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Laborers International Union of North America (Laborers) or International Union of Operating Engineers (Operating Engineers). A hearing was held on April 17, 2013, before Hearing Officer Rebekah Ramirez.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.

On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, an Indiana corporation with headquarters in Sulphur Springs, Indiana, stipulated that, during the past year, it provided services valued in excess of \$50,000 to customers located outside the State of Indiana. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, consistent with the record and prior Board decisions, that Teamsters Local 179, Laborers, and Operating Engineers are labor organizations within the meaning of Section 2(5) of the Act.²

¹ Only the Employer appeared at the hearing and no briefs were filed.

² See, e.g., *Teamsters Local 179*, 334 NLRB 362, 362 (2001); *St. John's Hospital*, 222 NLRB 1150, 1152, 1155 (1976) (Laborers), enf. granted in part, denied in part on other grounds 557 F.2d 1368 (10th Cir. 1977); *Manning, Maxwell & Moore, Inc.*, 143 NLRB 5, 6 (1963), enf. 324 F.2d 857 (5th Cir. 1963).

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer builds and maintains oil and natural gas pipelines at locations throughout the Midwest. At any of those jobsites, the Employer's typical work crew consists of four laborers, an operator, an oiler, and a foreman. The Employer is a member of the Distribution Contractors Association (DCA), which bargains for national collective-bargaining agreements with several unions on behalf of its members. The Employer has been signatory to contracts with Laborers to represent its laborers, and with Operating Engineers to represent its operators and oilers. These Unions have represented employees of the Employer for at least 30 years.

The employees represented by Laborers drive pickup trucks as needed in the course of their duties to transport material, equipment, and workers to, from, and within jobsites. Employees represented by Operating Engineers drive lowboy tractor-trailer rigs to transport heavy equipment; they load, unload, fuel, and operate the heavy equipment; and they drive pickup trucks as needed to acquire fuel for the heavy equipment. The Employer requires all of its drivers to maintain the licenses and endorsements required for the driving work they perform.

The Employer has never been signatory to a national agreement with the International Brotherhood of Teamsters and has never been party to any agreement with Teamsters Local 179. However, in 2010, the Employer had a project-only agreement with a different Teamsters local. On that job, the drivers represented by the other Teamsters local were idle for approximately half of their worktime, and they did not load and unload heavy equipment from the lowboys.

During the summer of 2012, at a jobsite in Will County, Illinois, an organizer from Teamsters Local 179 asked Employer Superintendent Mark Decker to discuss placing employees represented by Teamsters Local 179 on the Employer's jobsites. Decker refused. Then, on 2 successive days in November 2012, Teamsters Local 179 picketed seven jobsites in Kane, Kendall, and Will Counties, Illinois, over driving work that the Employer had assigned to employees represented by Laborers and Operating Engineers. The picketers carried signs reading "Teamsters Local 179 On Strike Against Roberts Pipeline" at each of the seven jobsites. The picketing caused the cessation of work at all seven jobsites because employees represented by Laborers and Operating Engineers would not cross the Teamsters' picket line.

B. Work in Dispute

We find, based on the record and as set forth in the notice of hearing, that the work in dispute is:

The driving work including but not limited to trucking, towing, pulling and hauling of material, equipment, and workers, including compressors, on flat-bed trucks, lowboys, stake-bed trucks, dump trucks and pickup trucks as well as fueling of equipment at jobsites within Kane, Kendall and Will Counties in the State of Illinois.

C. Contentions of the Parties

The Employer contends that the work in dispute should be awarded to Laborers and Operating Engineers. It argues that existing collective-bargaining agreements to which it is signatory, as well as its preference, current assignment, and long-established past practice support this award. It asserts that agreements between more than 100 pipeline companies represented by the DCA, Laborers, and Operating Engineers show that industry practice supports its position. It further asserts that its experience with Teamsters-represented employees under a project-only agreement demonstrates that assigning those employees to perform the disputed work creates gross inefficiencies when compared to the present arrangement, because, under the present arrangement, employees represented by Laborers and Operating Engineers productively perform other work when driving is not required. Finally, it asserts that Teamsters Local 179's unlawful picketing has caused it severe economic damage and accordingly requests that the Board determine the dispute.

None of the Unions involved either appeared at the hearing or has made any representation to the Board in connection with this proceeding.³

D. Applicability of the Statute

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work, and that a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See, e.g., *Operating Engineers Local 150 (R&D Theil)*, 345 NLRB 1137, 1139 (2005). We find that these requirements have been met.

³ None of the parties filed posthearing briefs. The Employer presented its position to the Board in a closing statement at the hearing.

First, there is reasonable cause to believe that Teamsters Local 179 claimed work also claimed by Laborers and Operating Engineers. As discussed above, the Employer presented evidence that, in summer 2012, Teamsters Local 179 attempted to secure the disputed work for employees represented by it, and, after being rebuffed, it picketed the Employer's jobsites in November 2012.⁴ See *Glaziers District Council 16 (Service West)*, 357 NLRB 560, 561–562 (2011) (picketing constituted an effective claim to work previously sought by picketing union). And, it is undisputed that Laborers-represented and Operating Engineers-represented employees also claimed this work by actually performing it. See *id.*, at 563; see also *Laborers Local 265 (Henkels & McCoy)*, 360 NLRB 819, 822 (2014) (performance of disputed work by represented employees constitutes evidence of a claim for the work, even absent an explicit claim by the employees' representative).

Next, we find that there is reasonable cause to believe that Teamsters Local 179 has used means proscribed by Section 8(b)(4)(D) to enforce its claim to the disputed work. Teamsters Local 179 picketed seven Employer jobsites in an effort to secure the disputed work, and the Act proscribes the use of such means. See *Electrical Workers Local 71 (US Utility Contractor Co.)*, 355 NLRB 344, 346 (2010).

Finally, we find, based upon the Employer's un rebutted assertion, that there is no agreed-upon method for voluntary adjustment of this dispute to which all parties are bound.

Because we find that all three prerequisites for the Boards' determination of a jurisdictional dispute are established, we find that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

⁴ The hearing officer found, and we agree, that the record contains no evidence that Teamsters Local 179 has subsequently disclaimed the work.

The following factors are relevant in making the determination of this dispute.

1. Board certifications and collective-bargaining agreements

The work in dispute is not covered by any Board orders or certifications. As discussed above, however, the Employer is signatory to national collective-bargaining agreements with Laborers and Operating Engineers, but is not party to any agreement with Teamsters Local 179. Thus, we find that the factor of collective-bargaining agreements favors awarding the disputed work to employees represented by Laborers and Operating Engineers.

2. Employer preference, current assignment, and past practice

The Employer prefers to maintain its current assignment of the disputed work to employees represented by Laborers and Operating Engineers because those employees can perform other work when not driving. The Employer specifically prefers to assign employees represented by Operating Engineers to drive the lowboys, because they can load, unload, and fuel the equipment, resulting in a more efficient operation. The hearing officer found that Laborers and Operating Engineers have represented the Employer's employees for more than 30 years, while Teamsters Local 179 has never represented any employees of the Employer. We accordingly find that this factor favors awarding the disputed work to employees represented by Laborers and Operating Engineers.

3. Industry and area practice

Unrebutted evidence indicates that DCA represents more than 100 pipeline companies, all of which have relationships with Laborers and Operating Engineers, and none of which have relationships with the International Brotherhood of Teamsters. Thus, we find that this factor favors awarding the disputed work to employees represented by Laborers and Operating Engineers.

4. Relative skills

The record shows that employees represented by Laborers and Operating Engineers have the necessary skills, and maintain the necessary licenses and endorsements, to perform the disputed work. No evidence was presented regarding the qualifications of employees represented by Teamsters Local 179 to perform the disputed work.

Based on the record before us, we find that the relative skills factor favors awarding the disputed work to employees represented by Laborers and Operating Engineers.

5. Economy and efficiency of operations

The undisputed evidence establishes that Teamsters-represented employees on a project-only contract remained idle for approximately half of their worktime, and did not load and unload heavy equipment from the lowboys. Conversely, the assignment of the disputed work to employees represented by Laborers and Operating Engineers, respectively, was more economical and efficient, because the latter groups of employees could perform other work instead of remaining idle when driving was not required. Thus, we find that this factor favors awarding the disputed work to employees represented by Laborers and Operating Engineers.

Conclusions

After considering all of the relevant factors, we conclude that employees represented by Laborers and Operating Engineers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, current assignment, past practice, industry and area practice, relative skills, and economy and efficiency of operations. In making this determination we award the work to employees represented by Laborers and Operating Engineers, not to those labor organizations or to their members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Roberts Pipeline, Inc., represented by Laborers International Union of North America and by International Union of Operating Engineers, are entitled to perform the driving work including but not limited to trucking, towing, pulling and hauling of material, equipment, and workers, including compressors on flat-bed trucks, lowboys, stake-bed trucks, dump trucks, and pickup trucks as well as fueling of equipment at jobsites within Kane, Kendall, and Will Counties in the State of Illinois.

2. International Union of Teamsters, Local 179 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Roberts Pipeline, Inc. to assign the disputed work to employees represented by it.

3. Within 14 days from this date, International Union of Teamsters, Local 179 shall notify the Regional Direc-

tor for Region 25 in writing whether it will refrain from forcing Roberts Pipeline, Inc., by means proscribed by

Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.